



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

Analysis of Enrolled Senate Bills 450-3

Topic: Residential Builders
Sponsor: Senators Basham and Cassis
Co-Sponsors: Senators Basham and Cassis
Committee: Senate Economic Development, Small Business, and Regulatory Reform
House Commerce

Date Introduced: April 26, 2007

Date Enrolled: December 13, 2007

Date of Analysis: December 13, 2007

Position: The Department of Labor & Economic Growth supports the bills.

Problem/Background: Buying a home is the largest single investment that most people will ever make. Michigan law requires residential builders to be licensed. The Michigan Department of Labor & Economic Growth regularly advises consumers to exercise caution in selecting a builder. Advice includes talking to friends, neighbors, and co-workers who have had good experiences, asking a prospective builder for a copy of his or her license and references, obtaining estimates, and entering into a strong contract. Despite the requirements of Michigan law and the advice of the department, Better Business bureaus, and others, Michigan citizens are still bilked by unscrupulous contractors.

A Detroit television reporter's expose of unlicensed contractors preying on Detroit homeowners resulted in the creation of a bi-partisan task force in the Senate to consider ways to strengthen Michigan laws and protect consumers. The task force met for several months before making its recommendations.

Governor Granholm vetoed similar bills last session, because the costs imposed on the department related to assuring continuing competence were too onerous and insufficient funding was included in the bills for the proposed enforcement fund. The Governor also opposed the proposed \$65 fee for the code book. The enrolled bills address all of these problems in a constructive manner.

Description of Bill: Senate Bills 450 and 452 amend Article 6 of the Occupational Code. Penalties for unlicensed activity are substantially increased. All such violations would now be reportable misdemeanors. Potential jail time would increase from a maximum of 1 year in jail for a first offense to a maximum of 4 years for third and subsequent offenses. Fines would be set at a minimum of \$5,000 and a maximum of \$25,000. In the event of offenses causing death or serious injury, a violation would be classified as a felony. Restitution is required for any violation of the act. Other amendments include:

- Section 602 is amended to clarify that restitution be based upon proofs submitted to, and the finding made by, the hearing examiner after a contested case.

- Section 604 is amended to add aiding and abetting unlicensed activity to the list of violations for which penalties can be assessed under Section 602.
- Section 606 permits the department, the Attorney General, and a county prosecutor to utilize the forfeiture provisions in the Revised Judicature Act to enforce the prohibition against unlicensed activity. Senate Bill 451 makes the appropriate change in the Revised Judicature Act.
- Senate Bill 451 requires a court entering a conviction related to a violation of Section 601 to notify the Bureau of Commercial Services.

Several changes are made to Article 24, the residential builder section of the Code. These include requiring one member of the Residential Builders' and Maintenance and Alteration Contractors' Board to be a building official, submission of identification when applying for a licensure, and pre-licensure education and continuing competency. Education courses described in a National Association of Homebuilders publication are adopted by reference. Construction code update courses and work place safety and fire safety courses approved or offered by the department are also approved by the bill. Other courses may be recognized as equivalent pursuant to rule. An applicant for renewal would be required to affirm that he or she has a current copy of the Michigan Residential Code and has fulfilled the appropriate continuing competency requirements. A qualifying officer is required to obtain a license as an individual. For a corporate license, a copy of an operator's license or personal identification card would be required for each officer, partner, member, or managing agent for identification purposes. In any case where the licensee or respondent fails to appear, participate, or defend, the bill requires granting the relief requested by default. The department is required to post final orders of the board on its website and annually must post the number of final orders.

A licensee designated as inactive is exempt from the continuing education provisions of the bill but must continue to pay the annual license fees. When activating the license, the licensee must complete one credit hour of continuing competency for that calendar year.

Senate Bill 453 amends the State License Fee Act to create a Builder Enforcement Fund. The license fee for the first license cycle would be increased by \$20 per year to \$60 per year and the \$10 would go into the Enforcement Fund. In subsequent license cycles the annual license fee would be \$50 and \$5 would go into the fund.

The bills are tie-barred. The increased penalties for unlicensed activity will go into effect immediately under the bills and the remainder of the provisions will go into effect June 1, 2008.

Summary of Arguments

Pro: These bills will increase the competence of residential builders and provide funding for an enforcement fund to deal with problems created by unscrupulous contractors who prey on the public.

The bills substantially increase penalties for violation of the Occupational Code and will serve as a significant deterrent to unlicensed activity. The forfeiture provisions will provide an incentive for county prosecuting attorneys to prosecute cases involving allegations of unlicensed activity.

The bills address the problems in last session's bills in a very constructive way. The continuing competency provisions have been modified to reduce the burden on the department. The homebuilders compromised with the department on funding for the enforcement fund and agreed to \$5 in subsequent

license cycles. The code book fee is gone. Most builders will obtain their code book from an education provider as part of their continuing competency requirement.

Con: The Attorney General's office has expressed concerns that funding for the proposed enforcement fund is still not sufficient.

Although the continuing competency provisions of the bill have been revised to reduce their burden on the department, there will still be a substantial increase in workload for the Bureau of Commercial Services.

Fiscal/Economic Impact

(a) Department

Budgetary: The pre-licensure and continuing education provisions in Senate Bill 542 will require additional staffing.

Revenue: Senate Bill 543 will increase residential builder licensee fees to \$60 per year for the first three-year license cycle after enactment and to \$50 per year for subsequent license cycles. Licensee fees are currently set at \$40 per year, but the rate is scheduled to revert to \$30 at the end of the fiscal year. The fee increase in the bill would be permanent.

The bill creates a Builder Enforcement Fund to enforce Occupational Code provisions relating to unlicensed builders. A total of \$30 from fees received in a single license cycle after June 1, 2008 will go into the Fund. A total of \$15 from fees collected in subsequent license cycles will also go into the Fund. The bill contains a trigger mechanism capping the Fund at \$3 million and restarting contributions when the Fund dips below \$750,000.

Comments:

(b) State

Budgetary: The bills will have no direct impact on the state GF/GP budget.

Revenue: The bills will have no direct impact on state revenues. If revenues from licensee fees are insufficient to cover the additional costs imposed by these bills or if a greater than expected number of builders decide not to renew their licensees, other revenues may have to be diverted for these purposes.

Comments:

(c) Local Government

Comments: The increased penalties in the bill and particularly the forfeiture provisions should help increase the interest of local prosecutors in unlicensed builder cases. The Builder's Enforcement Fund may also be used to directly reimburse county prosecutors for the costs of prosecuting a case.

Other State Departments: The Department of Attorney General has an interest in this bill.

Any Other Pertinent Information: The Michigan Association of Homebuilders and the Building Industry Association of Southeast Michigan support the bills. There was no opposition.

Administrative Rules Impact: The department would be required promulgate the following rules:

- Requirements other than those specified for determining that a course meets the minimum criteria for developing and maintaining continuing competency.
- Requirements for acceptable courses offered at seminars and conventions.
- Acceptable distance learning.
- Alternate forms of continuing competency.